

WORKER SAFETY

Departing OSHA chief leaves robust oil and gas legacy

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Departing Occupational Safety and Health Administration chief David Michaels worked closely with industry partners to address the high rate of fatalities in U.S. oil fields. Photo by the Department of Labor, courtesy of Flickr.

Recent findings that the fatality rate for the oil and gas workforce has declined would appear to indicate that federal initiatives to improve the industry's safety record are taking root.

Under the leadership of David Michaels, the longest-serving assistant secretary of Labor for occupational safety and health, the rate of oil field deaths last year dipped to 16.7 per 100,000 workers, the industry's lowest fatality rate since Michaels took office in 2009 ([Energywire](#), Dec. 23, 2016). He has made oil and gas safety a centerpiece of his tenure as chief of the Occupational Safety and Health Administration, inserting the industry in the agency's Severe Violator Enforcement Program (SVEP), introducing new standards for crystalline silica exposure during hydraulic fracturing and bringing to light a "culture" of underreporting injuries in the energy sector.

But the true test of those efforts will be whether the oil and gas industry's fatality rate stays low over time, said Michaels, who leaves OSHA today, making room for a successor to be appointed by President-elect Donald Trump.

"I'm hesitant to look at one year's worth of data," Michaels said, noting that there was a spike

in oil field fatalities in 2014, even as the industry's activity slowed ([Energywire](#), Sept. 18, 2015). "We're not taking any credit yet."

When he first took his post at OSHA, Michaels sought to help the agency become more data-driven. He quickly noticed that the oil and gas industry was recording a higher rate of occupational deaths than most other sectors. OSHA calculates its own fatality rate for oil and gas, even though Labor Department statisticians don't.

An official oil and gas safety standard has never been on the agenda for Michaels, who instead urged companies to improve their own performance internally ([Energywire](#), Dec. 8, 2014). His most formal efforts to regulate the industry came in the form of a new silica exposure standard and requirements to increase reporting of workplace injuries and illnesses. The latter inadvertently excluded oil and gas employers ([Energywire](#), May 17, 2016).

But oil and gas has been a focus of many non-regulatory OSHA initiatives. The agency last month issued a [guidance memorandum](#) to help inspectors conduct more effective workplace evaluations. OSHA investigators don't specialize in oil and gas safety, and the memo was designed to explain which employers on a work site are responsible for which hazards and how federal regulations should be applied in the oil field, Michaels said.

A standard, on the other hand, would provide instruction for employers. But the standard-setting process is a slow one, and Michaels said it's unlikely that the regulation-averse Trump administration would pursue that effort.

"I'd like to be surprised by that," he said.

Some in industry have critiqued Michaels' strategy of addressing oil and gas safety outside of a formal rulemaking. OSHA's inclusion of the upstream sector in SVEP may have been too sweeping an action that failed to take into consideration safety measures operators had already implemented, said Catherine Wilmarth, an associate in the Washington, D.C., office of the law firm Kelley Drye & Warren LLP ([Energywire](#), Aug. 25, 2015).

The move "marred a whole industry as particularly unsafe," she said.

"He's definitely done a lot, but we have to ask ourselves if what he's done overall has been helpful or detrimental for industry, and I think it's a mixed bag there," Wilmarth said.

Industry partnerships

Though Michaels, a former professor of environmental and occupational health at the George Washington University's Milken Institute School of Public Health, had no personal connection to the oil and gas industry, he found eager partners at the National Service,

Transmission, Exploration & Production Safety (STEPS) Network and the Association of Energy Service Companies (AESC).

During the early days of Michaels' tenure, the relationship was a rocky one, said AESC Executive Director Kenny Jordan. The industry was "coming off of a trust issue" with an OSHA that had taken a hard-line regulatory approach and didn't take time to listen to the operators that had to implement its rules, he said.

"He was at least willing to engage and listen to industry," Jordan said of Michaels. "We might not necessarily agree on how to implement some of the things, but he would seriously listen to you. He would work with us, and we would proceed as a group to work toward the common goal."

Michaels has spoken at OSHA conferences and AESC meetings, where in the past an area director or regional administrator might have made an appearance, Jordan said.

Operators were impressed by Michaels' efforts to engage the industry, rather than making assumptions about the business, said Rick Ingram, chairman of the STEPS Network, which was founded in 2003. Ingram said he hadn't worked with any of Michaels' predecessors quite as closely, but that could be a function of timing. Michaels' start date at OSHA coincided with the early days of the U.S. shale boom.

"He didn't buy into the negative stories about the industry," Ingram said. "He just rolled up his sleeves and went to work to try to improve the industry."

Though industry may not have always agreed with Michaels' approach, many companies were grateful to have a dialogue about OSHA's process, said Neal Kirby, spokesman for the Independent Petroleum Association of America.

"We hope to see many of these same qualities in Assistant Secretary Michaels' replacement," he said.

AESC members had asked Michaels for an oil and gas standard that would provide more specific safety guidelines for the industry, Jordan said.

"The companies that are trying to do it the right way are always going to be leery of companies that are trying to short-cut," he said. "It certainly isn't a level playing field."

Jordan said he's unsure whether a new standard will materialize under Trump's OSHA.

Transition

OSHA under the new president will likely focus more on the rules that are already on the

books, rather than introducing new requirements, Kelley Drye attorney Wilmarth said.

There will be "a shift in focus from developing new standards to working on compliance with existing standards and implementing programs to help employers understand their obligation under existing law," Wilmarth said.

In his meetings with the OSHA transition team, Michaels said he has gotten the sense that the agency's mission will remain unchanged. Because OSHA's industry partners have expressed strong support for his oil and gas initiatives, they will likely survive, he said.

STEPS, OSHA and the National Institute for Occupational Safety and Health just signed a five-year extension of an alliance they formed two years ago. That means the partnership could outlive the Trump administration if he is not re-elected in 2020, Ingram said.

"We have a robust plan, and we do expect to be able to work together," he said.

Michaels will return to his teaching position at GW, where he's been on leave for seven years. From his perch in academia, he plans to continue to monitor OSHA's work.

He won't be satisfied until oil and gas — and all other industries — reduce workplace fatalities to zero.

"That has to be the objective," Michaels said.